

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation 2022/0125(COD)	Awaiting Parliament's position in 1st reading
Amendments to the Financial Regulation Amending Regulation 2018/1046 2016/0282A(COD)	
Subject 8.70 Budget of the Union 8.70.02 Financial regulations 8.70.03 Budgetary control and discharge, implementation of the budget	
Legislative priorities Joint Declaration 2023-24	

Key players			
European Parliament	Joint Committee Responsible	Rapporteur	Appointed
	BUDG Budgets Budgetary Control		
Council of the European Union European Commission	CONT Budgets Budgetary Control		
	Commission DG Budget	Commissioner HAHN Johannes	
European Court of Auditors			

Key events			
22/04/2022	Legislative proposal published	COM(2022)0184	Summary
02/05/2022	Committee referral announced in Parliament, 1st reading		
07/07/2022	Referral to joint committee announced in Parliament		
08/09/2022	Committee report tabled for plenary, 1st reading	A9-0230/2022	Summary
12/09/2022	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
14/09/2022	Committee decision to enter into		

interinstitutional negotiations confirmed
by plenary (Rule 71)

Technical information

Procedure reference	2022/0125(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Regulation 2018/1046 2016/0282A(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 322-p1; Rules of Procedure EP 57_o; Euratom Treaty A 106a-pa; Rules of Procedure EP 59
Mandatory consultation of other institutions	European Court of Auditors
Stage reached in procedure	Awaiting Parliament's position in 1st reading
Committee dossier	CJ13/10/00186

Documentation gateway

Legislative proposal	COM(2022)0184	22/04/2022	EC	Summary
Court of Auditors: opinion, report	52022AA0002 OJ C 285 26.07.2022, p. 0003	28/06/2022	CofA	
Committee report tabled for plenary, 1st reading/single reading	A9-0230/2022	08/09/2022	EP	Summary

Amendments to the Financial Regulation

PURPOSE: to amend Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union in order to ensure an appropriate level of compensation in the event of reimbursement of a provisionally paid fine and to ensure that the Union is in a position to meet the financial obligations arising from it.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: in its judgment of 20 January 2021 in Case C-301/19 P, Commission v Printeos, the Court held that, on the basis of the obligation to take the necessary measures to comply with judgments of the Court of Justice of the European Union reducing or annulling a competition fine provisionally paid by an undertaking under Article 266(1) TFEU, the Commission was under an obligation to pay default interest for late repayment of the fine from the date the undertaking provisionally paid the fine to the Commission until the date of repayment.

This recent case law has led to unprecedented interest claims, far exceeding the interest earned on the amounts provisionally paid, for which appropriate solution needs to be found in the Union budget.

Therefore, it is therefore urgent to propose legislative measures to ensure an appropriate level of compensation in the event of reimbursement of a provisionally paid fine and the ability of the Union budget to satisfy the resulting financial needs. This requires several targeted amendments to the Financial Regulation.

CONTENT: the proposal specifies the budgetary tools and procedures to address the consequences of judgments of the Court of Justice of the European Union which reduce or cancel fines, other periodic penalty payments or sanctions initially imposed by an EU institution.

The main elements of the proposal are as follows:

Negative revenue

By derogation from the general rule that the budget should not contain negative revenue, the proposal specifies that interest and any other charge due on such cancelled or reduced amounts of fines, other penalties or sanctions, including any negative return related to those amounts should be considered as negative revenue of the Unions budget, so as to avoid any undue effect on the expenditure side of the Union budget

Interest for late payment

To compensate for the loss of enjoyment of monies from the date the undertaking provisionally paid the fine to the Commission until the date of repayment, the amount to be repaid should be increased by an interest at the rate applied by the European Central Bank to its principal

refinancing operations increased by one and a half percentage points as an adequate compensation for the undertaking in such situations, which excludes the need to apply any other interest rate on that amount.

Budgeting

To secure sufficient cash flow to compensate third parties for the loss of enjoyment of monies, it should be specified that the amounts received by way of fines, other penalties or sanctions and any accrued interest or other income generated by them may be entered in the budget by the end of the following financial year.

Restitutio in integrum

Pursuant to the general principle of restitutio in integrum applicable to the reimbursement of fines, other penalties or sanctions imposed by Union institutions and provisionally paid that are later cancelled or reduced by the Court of Justice of the European Union, it should be clarified that any negative return on the provisionally collected amount of such fines, other penalties or sanctions should not be deducted from the amount to be repaid.

Amendments to the Financial Regulation

The Committee on Budgets and the Committee on Budgetary Control Monika HOHLMEIER (EPP, DE) and Nils UAKOVŠ (S&D, LV) on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union.

The proposal aims to revise the Financial Regulation to address the consequences on the EU budget of recent judgments by the Court of Justice of the European Union that reduce or cancel competition fines.

In the context of its appeal in case C-221/22 P, *Commission v Deutsche Telekom*, the Commission requested the Court to review its judgment in *Printeos* to clarify the obligations incumbent on the Commission in case of reduced or cancelled fines. However, pending the clarifications by the Court, the Commission is faced with unprecedented interest claims, far exceeding the interest earned on the amounts provisionally paid. EUR 85 million might become due in 2022/23.

Under the current financial rules, those payments would have to come from the expenditure side of the EU budget, notably MFF Heading 7 (European Public Administration). This would in turn require an amending budget and the mobilisation of special instruments already in 2023, as the sub-ceiling for administrative expenditure is already stretched because of the current high inflation. In the estimates for the draft budget 2023, the Commission is already highlighting that the prevailing high inflation and rising energy prices have a very direct impact on the costs of administration and heading 7 will be under particular pressure in both 2022 and 2023. Despite very strict reprioritisation, in order to respect all legal obligations, the Commission underlines that the margin under the sub-ceiling will be fully exhausted, and recourse to special instruments is necessary in 2023 for an amount of EUR 62.5 million

The Commission proposal intends to address the situation essentially as follows:

- interest and compensation due where a fine is reduced or cancelled would be deducted from the revenue side of the budget (negative revenue) instead of impacting on the expenditure side; this would be a limited derogation from the rule against negative revenue laid down in Article 48(1) of the Financial Regulation;
- the interest rate on the amount repaid to an undertaking in case a fine is reduced or cancelled would be specifically set in legislation to the ECB refinancing rate increased by 1.5 percentage points.

The committee supports the approach of the Commission's proposal as the only sensible way forward given the circumstances and recommend that it be taken over by Parliament.

In an amendment, however, Members clarify that where the Commission does not repay the relevant part of the provisionally collected amounts for a reduced or annulled fine within 60 days, the conditions on late payments laid down in Article 116(5) of the Regulation should apply, with an interest rate set at the ECB refinancing rate plus 3.5 percentage points.

At the same time, the rapporteurs cannot avoid noting that several recent Commission decisions in high-profile competition cases have been annulled by the General Court and therefore call on the Commission, in line with recent Parliament resolutions, to draw the necessary lessons from the judgments with a view to minimising the risks of annulment or reduction of provisionally paid fines in future cases, which may bear significant impact on the EU budget.